Stephanie Rawlings-Blake
Mayor

CITY OF BALTIMORE
COMMISSION FOR HISTORICAL AND ARCHITECTURAL PRESERVATION

Tom Liebel, Chair

Lead Paint Hazards and Historic Preservation
June 2014

Thomas J. Stosur
Director

Lead Paint Hazards and Historic Preservation

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Background: Points in History

- **In 1786** Benjamin Franklin wrote of possible lead paint health hazards.
- **In 1832** A clinical description of lead poisoning was published and was known as plumbism.
- **Between 1875 and 1900**, thirty thousand cases of lead poisoning were reported from the lead mines of Utah alone.
- **By 1922** at least 3,000 publications already dealt with various aspects of the dangers of lead paint.
- **In the 1930s** the Baltimore City Health Department offered free tests to measure lead in the blood, and produced pamphlets warning homeowners not to paint furniture with lead paint.
- **In 1941** Baltimore passed the Hygiene and Housing Ordinance and in 1948 the Health Commissioner began a modest lead paint removal program.
- **In 1958** Baltimore City began to require labels on lead paint cans.

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Recent background:

- **In 1971 the federal Lead-Based Paint Poisoning Prevention Act was passed. In 1973 this act was amended.**
- **In 1978, the Consumer Product Safety Commission banned the residential use of lead-based paint.**
- **In 1992 Title X (ten) of the Housing and Community Development Act was passed, which shifted the emphasis from treating lead poisoning to preventing lead poisoning.**
- **1994 Maryland passed the Maryland Reduction in Lead Risk Housing Law.**

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Under the 1994 "Reduction of Lead Risk in Housing Law", Maryland Department of the Environment (MDE) assures compliance with mandatory requirements for lead risk reduction in rental units built before 1950; maintains a statewide listing of registered and inspected units; and, provides blood lead surveillance through a registry of test results of all children tested in Maryland. The Lead Program also oversees case management follow-up by local health departments for children with elevated blood lead levels; certifies and enforces performance standards for inspectors and contractors working in lead hazard reduction; and performs environmental investigations for lead poisoned children. The Lead Program provides oversight for community education to parents, tenants, rental property owners, home owners, and health care providers to enhance their role in lead poisoning prevention

http://www.mde.state.md.us/programs/Land/LeadPoisoningPrevention/Pages/Programs/LandPrograms/LeadCoordination/index.aspx

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The "Risk Reduction" Law requires that owners of rental property built prior to 1950 must register their property with MDE and then their property must meet one of the following standards of compliance:

- Lead Free – no lead paint in the property (the property is exempt from annual inspection)
- Limited Lead Free – the property has no lead paint on the interior, but has non-deteriorated lead paint on the exterior.
- Full Risk Reduction – the property has had a dust inspection in each room of each unit.
- Modified Risk Reduction – visual and dust inspection that is triggered by a 'notice of defective paint', or elevated blood levels of a child or pregnant woman living in the unit.

This law has been extremely successful; it has reduced the number of lead poisoning cases by 98%.

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MDE accredits inspectors and contractors working in lead hazard reduction

- Workers must be trained
- Must use safe work practices, which are similar to federal standards

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Recent Changes In Lead Paint law and policy:

- Center for Disease Control has lowered the accepted lead level from 10 ug/dl to 5 ug/dl. Recent reports suggest that no lead level in the blood stream is safe.
- 2012 Reducing the Incidence of Lead Poisoning (HB 644) expanded the definition of an effected property to include houses built between 1950 and 1978.
- 2011 Jackson v. Dackman Company invalidated the limited liability section of the lead law.

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Because of the Jackson vs. Dackman case –

On October 24, 2011, the Court of Appeals of Maryland held that certain provisions of the Reduction of Lead Risk in Housing Act ("Act"), codified in Title 6, Subtitle 8 of the Environment Article, that provide compliant landlords with qualified immunity from tort liability, were in violation of Article 19 of the Maryland Declaration of Rights, which provides citizens the right to access to the courts. The Court held that the unconstitutional provisions could be severed from the remainder of the Act, leaving all other provisions unchanged. **Nevertheless, Maryland Department of Environment's Lead Poisoning Prevention Program (set up by Title 6, Subtitle 8 of the Environmental Article "Reduction of Lead Risk in Housing Act") was not impacted by this Ruling**.

http://www.mde.state.md.us/programs/Land/Documents/LeadNews/Statement%20on%20recent%20Court%20of%20Appeals%20decision%20on%20the%20Lead%20Law.pdf

In other words, the Court of Appeals essentially removed the "law's $17,000 cap on payments to victims of lead poisoning from landlords who comply with the law (Sun 10/24/2011)."

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How does the 2011 change in the Reduction of Lead Risk in Housing Law affect the efforts of Historic Preservation and rehabilitation in Baltimore?

1. It **does not** require CHAP to change our ordinance, guidelines, or review process.

2. It does not change the way the Maryland Department of the Environment enforces the Reduction of Lead Risk in Housing Law.

3. Rental property owners of historic buildings in local historic districts are extremely concerned. Many property owners want to reduce the risk of lead paint poisoning as much as possible. Many want to achieve "lead free" or "limited lead free" certification under MD lead reduction act.

4. It **could** prevent redevelopment of historic housing, increase insurance rates, and ultimately bankrupt property owners who are in compliance with the Reduction of Lead Risk in Housing Law.

5. Has Created a litigious environment in Baltimore.

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What can CHAP do about the recent changes in the Reduction of Lead Risk in Housing Law?

1. Support efforts to change state laws
2. Revise guidelines to provide for a greater degree of flexibility in reviewing Notice-to-Proceed applications. Nevertheless, this does not have an impact on the legal environment. In other words, it won't prevent law suits.

Is CHAP liable if we deny an application to replace windows that test positive to lead?

1. This will be addressed in the hearing, with input from the City's Law Department.

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Lead Paint Effects on Children

- Learning Disabilities
- Violent, Aggressive Behavior
- Language Delay
- Attention Deficit Disorder
- Hyperactivity
- Decreased Intelligence (I.Q.)
- Reduced Motor Control and Balance
- Hearing and Memory Problems

Lead Paint Effects on Adults

- 46% increased rate of early mortality
- 16% to 19% risk of cardiovascular disease
- Hypertension
- Depression
- Reproductive Problems
- Complications related to osteoporosis
- Possible link to Alzheimer's disease

From Coalition to End Childhood Lead Poisoning Lead Paint Hazards in Older Properties – The Case for Developing Greater Flexibility in Historic Preservation Properties

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Data from the Baltimore City Health Department has tracked Lead Paint poisoning in Baltimore between 2009 and 2014. In the City, there were 714 reported cases. In National Register and local historic districts there were approximately 293 reported cases. Only 22 cases were reported in local historic districts.

WHAT IS A LEAD PAINT HAZARD?

Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Department pursuant to the federal Toxic Substances Control Act (TSCA) section 403 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

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A **lead-based paint hazard is** a condition that causes exposure to lead sufficient to cause adverse human health effects. Lead hazards include:

Deteriorated lead-based paint. As paint ages or is damaged, it deteriorates and may create hazardous conditions including lead-based paint chips, and lead-contaminated dust and soil.

Friction, impact and chewable surfaces. Certain surfaces are subject to damage and, therefore, likely to generate lead-contaminated dust, soil, and paint chips. These include

surfaces subject to friction or abrasion such as stair tread and window sashes,
surfaces subject to repeated impacts such as door frames, and
surfaces that are available to children to mouth or chew such as window sills and door frames.

Lead-contaminated dust. Lead-contaminated dust is dust with lead concentrations that exceed **Federal standards**. Lead-contaminated dust can come from lead-based paint that is deteriorated, disturbed, or subject to friction. It can also come from lead-contaminated soil. It is not always visible to the naked eye and it is difficult to clean up.

Lead-contaminated bare soil. Lead-contaminated soil is bare soil around a residence that has lead concentrations exceeding **Federal standards**. Deteriorating exterior paint that contains lead and past emissions of lead gasoline are the primary sources of lead in soil. Lead-contaminated soil can be tracked into a home by people or pets and become dust that is ingested.

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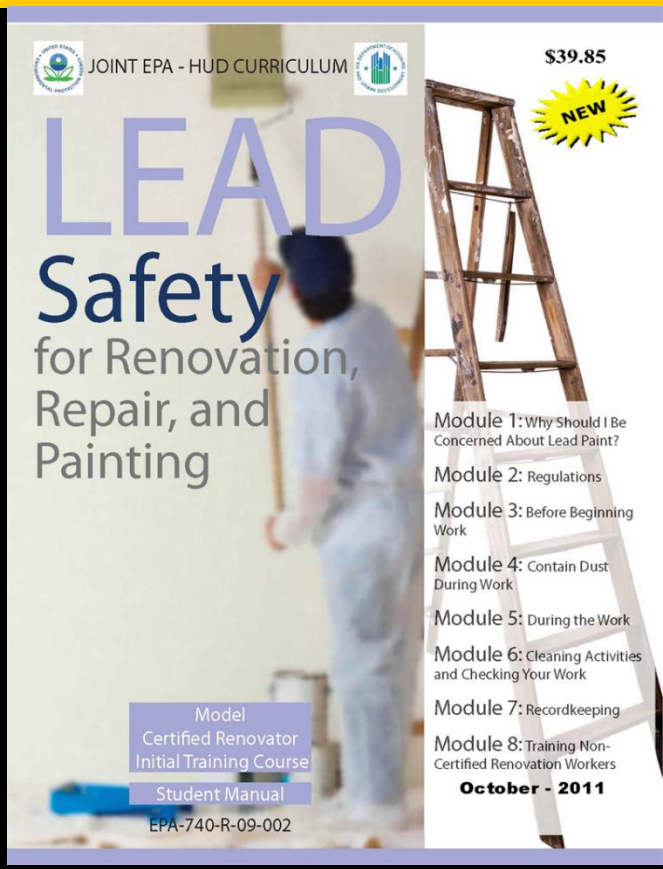

Lead paint abatement has become a sophisticated restoration activity and has increased the costs of restoration.

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Possible Lead-Paint Hazards

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Lead Paint and Friction Surfaces:

How can home owners and rental property owners eliminate or greatly reduce lead paint hazards caused by windows and doors?

•Install vinyl liners, remove lead paint, and fix the sashes so they don't move.
•Windows can also be replaced.

Removing the lead paint, however, in most case does not remove the lead from the window. It greatly reduces the amount of lead in the window and it greatly reduces the risk. In some cases it may remove the lead altogether.

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Historic Preservation brief #37, *Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing,* outlines a process to make rehabilitation decisions for reducing lead-paint hazards:

- Identify the historical significance of the architectural elements of a building;
- Undertake a risk assessment of Lead-Paint Hazards;
- Evaluate the options for lead hazard control within Historic Preservation guidelines

In fact many of the historic preservation documents that address lead paint, spell out a process to make rehabilitation decisions for reducing lead paint hazards.

Currently the CHAP Guidelines do not give the Commission the option to approve replacement of architectural features that test positive to lead.

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Summary Conclusions:

- Public Health research continues to expand the known negative impacts of lead paint poisoning.
- The October 24, 2011, the Court of Appeals of Maryland decision has made many rental property owners very concerned.
- Removing Lead paint from wood greatly reduces the amount of lead in the window, but in most cases does not remove all the lead from the window.
- A Lead Paint hazard is any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces
- Most historic preservation reports on lead paint spells out a process to make rehabilitation decisions.
- The proposed draft revisions to the guidelines would allow CHAP the ability to review and approve the replacement of that test positive to lead paint.

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